

ESTATE OF RODAR v SINGAPORE AIRLINES 23-1

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CENTRAL DISTRICT OF CALIFORNIA DEP

IN RE

AIR CRASH AT TAIPEI, TAIWAN,
ON OCTOBER 31, 2000

Case No. MDL 1394 GAF (RCx)

**ORDER GRANTING SINGAPORE
AIRLINE'S MOTION FOR PARTIAL
SUMMARY ADJUDICATION OF
PUNITIVE DAMAGES ISSUE**

This Document Relates to Those Cases
Listed in Appendices A and B Hereto

I.

INTRODUCTION

Defendants Singapore Airlines, Ltd. ("SIA") and EVA Airways Corporation's ("EVA") move the Court for Partial Summary Judgment.¹ Defendants contend that the Court should enter summary judgment in their favor on Plaintiffs' punitive damages claims because punitive damages are not recoverable in actions governed by the Warsaw Convention. Plaintiffs counter that the Warsaw Convention establishes a "pass-through" to local damages law, and does not bar any type of damages, including punitive damages. With respect to SIA's motion, the Court concludes that, although local law provides the substantive rule regarding the recovery of **compensatory** damages in air crash cases (*Zicherman v. Korean*

¹Defendants filed these motions in all of the cases listed in Appendix A.

Airlines, 516 U.S. 217 (1996)), no court that has considered this issue has permitted the recovery of punitive damages in an air crash case governed by the Warsaw Convention. Accordingly, the Court **GRANTS** SIA's motion for summary adjudication of the punitive damages issue. However, because further discovery must be completed regarding the status of EVA – whether it acted as the agent of SIA and therefore entitled to the Warsaw Convention's limitations on liability – the Court defers ruling on EVA's motion.

II.

DISCUSSION

The parties concede that most of the cases identified in Defendants' motions are governed exclusively by the provisions of the Warsaw Convention.² (See Appendix A). Moreover, the parties agree that the Warsaw Convention does not specifically provide for the recovery of punitive damages in air crash cases. The parties part ways, however, on the issue of whether punitive damages are barred under the Warsaw Convention. Although this issue has not yet been directly decided by the Supreme Court or the Ninth Circuit, "[e]very court that has addressed this issue has held that the liability and remedy contemplated by Article 17 of the Convention is compensatory in nature and not punitive....Therefore, courts uniformly have held that punitive damages are not available in cases of death or personal injury governed by the Warsaw Convention." In re Air Crash Disaster Near Peggy's Cove, Nova Scotia on Sept. 2, 1998, 2002 WL 334389, at *3 (E.D. Pa. Feb. 27, 2002)(collecting cases). See, e.g., In re Korean Air Lines Disaster of Sept. 1, 1983, 932 F.2d 1475 (D.C. Cir.), cert. denied, 502 U.S. 994 (1991); In re Air Disaster at

²The parties dispute the applicability of the Warsaw Convention in the following cases: Leonardo, et al. v. Singapore Airlines, CV 02-0524; Fen-Kiok Man, et al. v. Singapore Airlines, et al., CV 02-2263; Harrison v. Singapore Airlines, CV 01-5787; Penmatcha, et al. v. Singapore Airlines, CV 01-5298; Heng v. Singapore Airlines, CV 01-9049; Chye, et al. v. Singapore Airlines, CV 01-9052; Bich, et al. v. Singapore Airlines, CV 01-9054; Hein v. Singapore Airlines, CV 01-10173; Fook, et al. v. Singapore Airlines, CV 01-9048; Hui v. Singapore Airlines, CV 01-9053; Koon, et al. v. Singapore Airlines, CV 01-10330; Woo v. Singapore Airlines, CV 01-3316; and Randazzo v. Singapore Airlines, CV 02-0526.

1 Lockerbie, Scotland on Dec. 21, 1988, 928 F.2d 1267 (2d Cir.), cert. denied, 502
 2 U.S. 902 (1991); Floyd v. Eastern Airlines, Inc., 872 F.2d 1462 (11th Cir. 1989), rev'd
 3 on other grounds, 499 U.S. 530 (1991).

4 Nevertheless, Plaintiffs reiterate many arguments in this action that have been
 5 considered and rejected in such cases. Most significantly, Plaintiffs claim that the
 6 logic of relatively recent Supreme Court and Ninth Circuit decisions permits the
 7 recovery of punitive damages in Warsaw Convention cases, and that Article 25 of the
 8 Convention permits an award of punitive damages in cases of "willful misconduct."
 9 The Court disagrees, and concludes that plaintiffs attempt to read into those
 10 decisions a meaning never intended by their authors.

11 **1. The Zicherman Decision**

12 Plaintiffs claim that many of the cases relied upon by Defendants, such as
 13 Korean Air, Lockerbie, and Floyd, have been undercut by Justice Scalia's opinion for
 14 the Supreme Court in Zicherman v. Korean Air Lines Co., Ltd, 516 U.S. 217 (1996).
 15 In Zicherman, the Court concluded that the Warsaw Convention did not resolve the
 16 issues of "who may recover, and what **compensatory** damages they may receive."
 17 Id. at 227 (emphasis added). While Congress may enact special provisions
 18 resolving these issues, the Court held that absent such legislation, Articles 17 and
 19 24(2) of the Convention "provide nothing more than a pass-through," and authorize
 20 courts to apply the domestic law that would govern in absence of the Warsaw
 21 Convention. Id. at 229. Since the Warsaw Convention does not specifically address
 22 the issue of punitive damages, Plaintiffs seize on the "pass through" language of
 23 Zicherman as support for their claim that punitive damages are not absolutely barred
 24 in Warsaw Convention cases. On the strength of that phrase, Plaintiffs argue that
 25 courts must determine whether the domestic law applicable under the forum's
 26 choice-of-law rules would allow for punitive damages under the circumstances.

27 No court in any intervening decision has adopted Plaintiffs' analysis of the
 28 Zicherman "pass through" analysis. Those courts that have confronted the issue

1 have noted that Zicherman addressed only those types of *compensatory* damages
 2 available in Warsaw Convention cases, and never spoke in terms broad enough to
 3 encompass punitive damages. See, e.g., In re Air Crash Off Point Mugu, California
 4 on Jan. 30, 2000, 145 F. Supp. 2d 1156, 1162 (N.D. Cal. 2001) ("The court is of the
 5 opinion that the Supreme Court's 'pass through' language was discussing only those
 6 claims that were not otherwise barred by the Warsaw Convention, and that the Court
 7 did not mean to overrule the prohibitions established by the Convention."); In re
 8 Aircrash Disaster Near Roselawn, Indiana on Oct. 31, 1994, 960 F. Supp. 150, 152
 9 (N.D. Ill. 1997) ("[T]here are ample indications in the [Zicherman] decision that the
 10 Court was addressing only the various types of compensatory damages that may be
 11 available."). One court expressly noted that Zicherman's repeated references to
 12 claims for compensatory damages actually provides support for the conclusion that
 13 punitive damages are not recoverable under the Warsaw Convention. See
 14 Roselawn, 960 F. Supp. at 152 ("Far from rejecting the lower courts' conclusions that
 15 punitive damages are unavailable under the Warsaw Convention, Zicherman actually
 16 supports that conclusion by discussing damages in Convention claims purely in
 17 terms of compensatory damages."). This Court agrees. When read in its entirety,
 18 the Zicherman opinion clearly addresses the sole question of whether the
 19 substantive rule for awarding compensatory damages should be taken from French
 20 law – the language in which the treaty was written and from which the meaning of the
 21 term "damages" ("dommage" in the French) must be determined – or through
 22 application of local law, including the forum's choice of law principles. Because
 23 nothing in that discussion supports Plaintiffs' contention, the Court concludes that
 24 Plaintiffs' reliance on Zicherman is misplaced.³

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³Justice Scalia even noted that, although a jury in the case had awarded punitive damages as part of its verdict, the D.C. Circuit reversed that portion of the judgment – a ruling that was not appealed to the Supreme Court.

1 **2. The Bali Decision**

2 Plaintiffs also fail to persuade the Court that the case law from other circuits
 3 conflicts with the Ninth Circuit's decision in In re Aircrash in Bali, Indonesia on April
 4 22, 1974, 684 F.2d 1301, 1315 (9th Cir. 1982). Although Plaintiffs assert that
 5 Bali requires the Court to apply state or foreign law to decide the issue of whether
 6 punitive damages are recoverable in actions governed by the Warsaw Convention, a
 7 careful reading of the entire Bali opinion suggests otherwise. The Bali decision
 8 reveals the Ninth Circuit's refusal to apply state law in Warsaw Convention cases, to
 9 the extent it would circumvent the Convention's limitation on liability. Id. at 1308.
 10 However, because the Ninth Circuit concluded that punitive damages were not even
 11 recoverable under the applicable choice of law, the court did not have occasion to
 12 decide whether punitive damages claims would circumvent the Convention's
 13 limitations on liability. Id. at 1315. Since the Ninth Circuit never reached the issue of
 14 whether the Warsaw Convention would preempt state laws permitting the recovery of
 15 punitive damages, the Court concludes Bali is not determinative here.

16 **3. Article 25 of the Warsaw Convention**

17 Likewise, courts have found unpersuasive Plaintiffs' argument that Article 25
 18 would somehow overturn any punitive damages bar if the carrier commits willful
 19 misconduct.⁴ See, e.g., Laor v. Air France, 31 F. Supp. 2d 347, 351 (S.D.N.Y. 1998)
 20 ("A finding of willful misconduct has been held to negate the due care exclusion from
 21 liability contained in Article 20 and the monetary limitation of \$75,000 in Article
 22....However, Article 25 has not been read to expand recovery to include punitive as
 23 well as compensatory damages.")(citations omitted); Jack v. Trans World Airlines,
 24 Inc., 854 F. Supp. 654, 663 (N.D. Cal. 1994) ("Punitive damages are not recoverable
 25 in actions governed by the Warsaw Convention, even if the air carrier engaged in

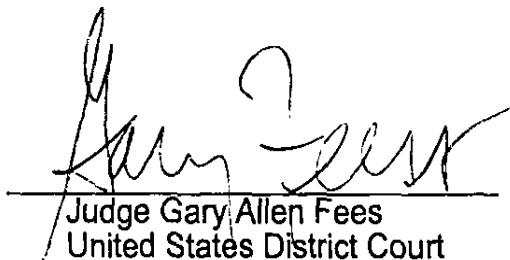
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 27 ⁴Article 25(1) of the Convention provides: "The carrier shall not be entitled to avail himself of the
 28 provisions of this convention which exclude or limit his liability, if the damage is caused by his
 willful misconduct or by such default on his part as, in accordance with the law of the court to
 which the case is submitted, is considered to be equivalent to willful misconduct."

1 willful misconduct."); Lockerbie, 928 F.2d at 1285-87 (discussing at length the history
2 and purpose of Article 25 and concluding that the Convention's only response to
3 willful misconduct is the lifting of the monetary limit on compensatory damages).

4 In light of the overwhelming legal authority that exists in support of
5 Defendants' motions, and in the absence of binding Supreme Court and Ninth Circuit
6 precedent holding otherwise, the Court finds no reason to depart from the generally
7 accepted principle that punitive damages are not available in Warsaw Convention
8 cases. Thus, the Court believes Defendants' Motions for Partial Summary should be
9 **GRANTED**. Accordingly, Plaintiffs' punitive damages claims asserted against
10 Defendant SIA should be **DISMISSED WITH PREJUDICE**.⁵

11
12 IT IS SO ORDERED.

13
14 DATED: August 26, 2002



Judge Gary Allen Fees
United States District Court

26 5 Although Defendants filed motions for partial summary judgment in over seventy cases (without
27 any regards to whether the plaintiff in each action actually asserted a punitive damages claim),
28 the Court will only enter partial summary judgment in the cases identified in Appendix B.
Appendix B contains only those Warsaw Convention cases in which a punitive damages claim
has been made, and which are not the subject of Defendants' pending motions to dismiss for
lack of subject matter jurisdiction.

APPENDIX A**Cases Identified in SIA's Motion**

NO.	PASSENGER(S)	CASE NAME	CASE NUMBER
1.	John Diaz	Diaz v. SIA	CV 00-11879
2.	Phillip Thomas	Thomas v. SIA	CV 00-12555
3.	Walter Lee	Young v. SIA	CV 01-5261
4.	Rem Phang	Phang v. SIA	CV 01-5096
5.	Michael Peng	Peng v. SIA	CV 00-13562
6.	John Wiggans	Wiggans v. SIA	CV 01-1471
7.	Jamal Obagi	Obagi v. SIA	CV 01-1472
8.	Peter C.T. Shieh	Shieh v. SIA	CV 01-0155
9.	Lee Dan Mei, Jonathan Yang, Yang Yang	Yang, et al. v. SIA	CV 01-0783
10.	Hung Hsiu Yu Chen	Chen v. SIA	CV 01-1023
11.	Boris Chen, Chris Chen	Huang v. SIA	CV 01-1022
12.	Hector Favela, Martha Favela	Favela v. SIA	CV 01-1426
13.	Helen Broadfoot	Broadfoot v. SIA	CV 01-5098
14.	Akash Volam	Est. of Volam, et al. v. SIA	CV 01-1756
15.	Nan Shann Chuang	Est. of Chuang, et al. v. SIA	CV 01-1754
16.	Neelima Vuppala	Est. of Vuppala, et al. v. SIA	CV 01-1751
17.	Varaprasad Somasekhara Koppaka	Koppaka v. SIA	CV 01-1750
18.	Surya Narayana Marellapudi	Est. of Marellapudi, et al. v. SIA	CV 01-1755
19.	Janardhan Volam	Est. of Volam, et al. v. SIA	CV 01-1753

20.	Ching Ying Wu, Richard Wu	Est. of Wu, et al. v. SIA	CV 01-1752
21.	Christina Reed	Reed v. SIA	CV 01-1936
22.	David Ralph	Ralph v. SIA	CV 01-1938
23.	Jean Roa-Ching Chen	Lee, et al. v. SIA	CV 01-2015
24.	Lin Kuang Hui	Cheng, et al. v. SIA	CV 01-2074
25.	Charles Moore	Morly v. SIA	CV 01-5099
26.	Chang Chin Liang, Chang Po Chai	Est. of Liang, et al. v. SIA	CV 01-2450
27.	Rabia Aliniazee	Aliniazee v. SIA	CV 01-5100
28.	Jenny Y. Dwan	Est. of Dwan, et al. v. SIA	CV 01-2749
29.	Anthony Woo	Woo v. SIA	CV 01-3316
30.	Chan Yu Chau	Hsiung, et al. v. SIA	CV 01-3356
31.	Selina Sung, Yvannie Sung	Sung, et al. v. SIA	CV 01-3372
32.	Raju Penmatcha	Penmatcha, et al. v. SIA	CV 01-5298
33.	Charles Moore	Moore, et al. v. SIA	CV 01-4315
34.	Jeffrey Aw	Kivrizis v. SIA	CV 01-5076
35.	Eric Sha	Sha v. SIA	CV 01-4540
36.	Jay Spack	Spack v. SIA	CV 01-5019
37.	Vivian Chen	Chen v. SIA	CV 01-4045
38.	John Harrison, Mary Harrison	Harrison v. SIA	CV 01-5787
39.	Douglas Villermin	Villermin v. SIA	CV 01-5788
40.	Margaret Rabley	Rabley v. SIA	CV 01-6323
41.	Paul Blanchon	Blanchon v. SIA	CV 01-7255
42.	Susana Enriquez Dominguez	Dominguez v. SIA	CV 01-7256
43.	Roberto Iglesias	Iglesias v. SIA	CV 01-7257

44.	Fuad A. Memon	Memon v. SIA	CV 01-0777
45.	Tee Seok Choo	Fook, et al. v. SIA	CV 01-9048
46.	Nguyen Van Hien	Van Hien, et al. v. SIA	CV 01-10173
47.	Lim Lay Har	Heng, et al. v. SIA	CV 01-9049
48.	Lin Hong Wen	Lin, et al v. SIA	CV 01-9051
49.	Neo Lee Keow	Chye, et al. v. SIA	CV 01-9052
50.	Keng Hui Teng	Teng, et al. v. SIA	CV 01-9053
51.	Anh Dung Nguyen	Nguyen, et al. v. SIA	CV 01-9054
52.	Janardhan Volam	Est. of Volam v. SIA	CV 01-9069
53.	Harald Linke	Linke v. SIA	CV 01-9104
54.	Ladan Mohajerani, Massoud Dabir, An Chi Pang	Est. of Mohajerani, et al v. SIA	CV 01-9183
55.	Cai Von Rumohr	Rumohr v. SIA	CV 01-9201
56.	Chi An Wei	Wei v. SIA	CV 01-9198
57.	Richard Nemeth	Nemeth v. SIA	CV 01-9197
58.	Sally Walker	Walker v. SIA	CV 01-9200
59.	Steven Courtney, Debra Brosnan	Courtney v. SIA	CV 01-10171
60.	Lin Ming Liang	Lin v. SIA	CV 01-9236
61.	Pramod Poddar	Est. of Poddar, et al. v. SIA	CV 01-10333
62.	Mohammed M. Khan, Begum Noor Jehan	Khan, et al. v. SIA	CV 01-9297
63.	Tan Yip Thong	Koon, et at v. SIA	CV 01-10330
64.	Raju Penmatcha	Penmatcha, et al. v. SIA	CV 01-10340
65.	Tah Hsiang Chen	Chen v. SIA	CV 01-9350

66.	Teng Kuang Hui, Raju Penmatcha, Anh Dung Nguyen, Neo Lee Keow, Tee Seok Choo, Lim Lay Har, Lin Hong Wen, Tan Yip Thong	Chang, et al v. United Airlines	CV 01-10335
67.	Yeh Chi Fua	Gin, et al. v. SIA	CV 01-9345
68.	Roeup Pork	Pork, et al. v. SIA	CV 01-9347
69.	William Randazzo	Randazzo, et al. v. SIA	CV 02-0526
70.	Yong Fen Min, Lee Nyuk Ha, Loida Danner, Lai Chew Yen	Fen-Kiok Man, et al. v. SIA	CV 02-2263
71.	Hendric Leenardo, Anton Gunadi, Lailawati Gunadi, Sigit Suciptyono	Leenardo, et al. v. SIA	CV 02-0524

Cases Identified in EVA's Motion

No.	PASSENGER(s)	CASE NAME	CASE NUMBER
1.	Anthony Woo	Woo v. SIA	CV 01-11174
2.	John Harrison, Mary Harrison	Harrison v. SIA	CV 02-2267
3.	Douglas Villermin	Villermin v. SIA	CV 02-2266
4.	Paul Blanchon	Blanchon v. SIA	CV 01-7255
5.	Johannes Van Schijndel, Yue Ying Chuan, Ang Ming Chuang, Ng Siok Chin, Elaine Tan Whee Ling, Chok Fook Chiong	Van Schijndel v. EVA	CV 02-2530

6.	Francois Parent	Parent, et al. v. EVA	CV 02-0277
7.	Susan Enriquez Dominguez	Dominguez v. SIA	CV 01-7256
8.	Roberto Iglesias	Iglesias v. SIA	CV 01-7257
9.	Teng Kuang Hui, Raju Penmatcha, Anh Dung Nguyen, Neo Lee Keow, Tee Seok Choo, Lim Lay Har, Lin Hong Wen, Tan Yip Thong	Chang, et al. v. SIA	CV 01-4889
10.	Pramod Poddar	Est. of Poddar, et al. v. SIA	CV 01-10333
11.	Yong Fen Min, Lee Nyuk Ha, Loida Danner, Lai Chew Yen	Fen-Kiok Man, et al. v. SIA	CV 02-2263
12.	Hendric Leenardo, Anton Gunadi, Lailawati Gunadi, Sigit Suciptoyono	Leenardo, et al. v. SIA	CV 02-0524

APPENDIX B

No.	PASSENGER(S)	CASE NAME	CASE NUMBER
1.	John Diaz	Diaz v. SIA	CV 00-11879
2.	Phillip Thomas	Thomas v. SIA	CV 00-12555
3.	Walter Lee	Young v. SIA	CV 01-5261
4.	John Wiggans	Wiggans v. SIA	CV 01-1471
5.	Jamal Obagi	Obagi v. SIA	CV 01-1472
6.	Hector Favela, Martha Favela	Favela v. SIA	CV 01-1426
7.	Chang Chin Liang, Chang Po Chai	Est. of Liang, et al. v. SIA	CV 01-2450
8.	Margaret Rabley	Rabley v. SIA	CV 01-6323
9.	Fuad A. Memon	Memon v. SIA	CV 01-0777
10.	Cai Von Rumohr	Rumohr v. SIA	CV 01-9201
11.	Chi An Wei	Wei v. SIA	CV 01-9198
12.	Richard Nemeth	Nemeth v. SIA	CV 01-9197
13.	Sally Walker	Walker v. SIA	CV 01-9200
14.	Steven Courtney, Debra Brosnan	Courtney v. SIA	CV 01-10171
15.	Mohammed M. Khan, Begum Noor Jehan	Khan, et al. v. SIA	CV 01-9297
16.	Jeffrey Platz	Craig v. SIA	CV 00-12786